

Central Valley Regional Water Quality Control Board

24 April 2013

Tom Quinn, Forest Supervisor
United States Department of Agriculture
Forest Service
Tahoe National Forest
631 Coyote Street
Nevada City, CA 95959

INCLUSION OF UNITED STATES FOREST SERVICE AS DISCHARGER IN TENTATIVE WDRS FOR THE MAYFLOWER MINE, SIERRA COUNTY

Dear Mr. Quinn,

Central Valley Water Board staff is responding to your 18 March 2013 letter in which you protest the naming of the United States Forest Service (US Forest Service) as a discharger along with Melbourne and Steve Allenbaugh in Tentative Waste Discharge Requirements for the Mayflower Mine in Sierra County. After consulting with the State Water Resources Control Board's legal office, I must inform you that I find no reason to agree with your assertion that the US Forest Service has been "wrongfully named" as a discharger.

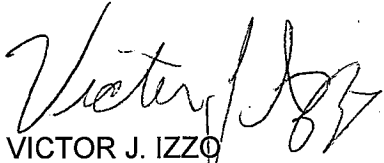
Indeed, it appears that inclusion of the US Forest Service is entirely appropriate and is consistent with long-standing policy. Your position that a landowner is not responsible for its tenants' discharges is contrary to State Water Board precedent. Both the Attorney General and the State Water Resources Control Board have long interpreted Porter-Cologne and its predecessor, the Dickey Act, to define real property owners as dischargers even when the owner had no involvement with the tenant's activities. Under this precedent, a regional board may name property owners in waste discharge requirements for constituents discharging from their land (*Petition of USDA, SWRCB Order No. 87-5; Petition of Zoecon, SWRCB Order No. 86-2; 27 Ops. Cal. Atty. Gen. 182 (1956)*), and order property owners to clean up and abate discharges of their tenants or prior owners or occupants of the land (*Petition of Arthur Spitzer et al., SWRCB Order No. WQ 89-8; Petition of Zoecon, supra.*) (*26 Ops. Cal. Atty. Gen. 88, 90-91 (1955), cited in 63 Ops. Cal. Atty. Gen. 51 (1979)*).¹ Since such property owners are "dischargers," they are within the regulatory definitions of "discharger" in 23 Cal. Code of Regs. 2601 and 27 Cal. Code of Regs. 20164. Both Title 27, Division 2 (non-hazardous landfills) and Title 23, Division 3, Chapter 15 (hazardous waste landfills) clearly contemplate that both owners and operators are responsible for compliance with the regulations.

The State Water Board specifically concluded in Order No. 87-5 that a regional water board could name the US Forest Service as a discharger based on its landowner status. The State Water Board order

¹ State Water Board orders are available at http://www.waterboards.ca.gov/board_decisions/adopted_orders/index.shtml

involved a National Pollutant Discharge Elimination System (NPDES) permit, but that distinction does not change the results since the same analysis discussed in Order 87-5 applies under Water Code section 13263. Your letter indicates that, similar to the situation in Order 87-5, the US Forest Service is the "land manager" in this case. Consistent with Order No. 87-5, the US Forest Service has been named secondarily liable in the Tentative Waste Discharge Requirements for the Mayflower Mine.

Please contact me at (916) 464-4626 or via email at vizzo@waterboards.ca.gov if you have any questions.



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cc; Patrick Pulupa, Senior Staff Counsel State Water Resources Control Board, Sacramento